allow the vendee to rescind but sufficient to defeat the vendor's bill for specific performance. See *Welch Pub. Co.* v. *Johnson Realty Co., supra;* Fry, Specific Performance, (5th ed.) § 652. This principle is illustrated by the instant case, where a misrepresentation in one of two "uncomplicated contracts", one contract not conditioned upon the other, did not give rise to a right to rescind the other, but was sufficient to defeat specific performance because of the unfairness and hardship which would result in granting this kind of relief to the party in the wrong. Some courts conveniently escape the difficulty presented by the "uncomplicated" contracts, by fastening upon any suggestion which would combine the two contracts and thereupon allowing a rescission. *Dykes* v. *Blake* (1838) 4 Bing. N. C. 463; *cf. Monds* v. *Birchell* (1908) 59 Misc. 287, 112 N. Y. Supp. 249.

VENDOR AND PURCHASER—VENDOR'S LIEN—ENFORCEMENT AGAINST SURVIVING TENANT BY THE ENTIRETY.—The plaintiff conveyed land by the entirety to the defendant and her husband, and took the husband's note for the purchase price. The husband died, leaving the note unpaid, and the plaintiff seeks to enforce his vendor's lien against the wife, who defends on the ground that she did not participate in the contract of purchase. *Held,* the lien could be enforced. *Moore* v. *Cary* (Tenn. 1917) 197 S. W. 1093.

Where the purchase price for land has not been paid upon conveyance, nor security taken for its payment, the courts in some jurisdictions will ordinarily imply an equitable lien. 2 Jones, Liens (3rd ed.) § 1061. It would not be profitable to make any further general statements since the decisions involving such questions as in what manner, in whose favor, and against whom this lien operates, are in hopeless conflict, 3 Pomeroy, Eq. Juris. (3rd ed.) § 1251, each case being governed by its particular equities. See *Fisk* v. *Potter* (N. Y. 1865) 2 Abb. App. Dec. 138, 140. The indefiniteness in scope of this lien is to a great extent due to the uncertainty of its origin. It has been held to arise out of considerations of natural equity, see *Fisk* v. *Potter, supra,* or out of the implied intention of the parties, *Wendell* v. *Pinneo* (1906) 127 Ill. App. 319, or to rest upon inadequacy of legal remedy, since at common law land was immune from attachment. See *Ahrend* v. *Odiorne* (1875) 118 Mass. 261. The right is not an estate in land, but a right to a lien in equity, see *Berger* v. *Berger* (1899) 104 Wis. 282, 80 N. W. 585; *Marchand* v. *Railroad* (1910) 147 Mo. App. 619, 127 S. W. 387; 3 Pomeroy, *op. cit.* § 1234, and is enforceable against all but innocent purchasers for value. Maitland, Equity 252; see *Acton* v. *Waddington* (1899) 46 N. J. Eq. 16, 18 Atl. 356; but see *Robinson* v. *Owens* (1899) 103 Tenn. 91, 52 S. W. 870, and judgment creditors without notice. 2 Jones, *op. cit.* § 1081; *Bayley* v. *Greenleaf* (1822) 20 U. S. 46; but see *Lissa* v. *Posey* (1887) 64 Miss. 352, 1 So. 500. Since the wife in the instant case was in the position of a volunteer she took the land subject to the lien, and it was, therefore, unnecessary for the court to base its decision on the ground that by accepting the deed, she had become a party to the purchase.

WILLS—TESTAMENTARY CHARACTER OF WRITING.—A decedent executed during his lifetime a written agreement providing for the renewal from year to year of certain notes made by him and for their payment upon his death. In the probate of a will made subsequent to this

contract, it was contended that the instrument provided for a testamentary disposition of property, and was, therefore, revoked by a clause in the will revoking all former wills. *Held,* that the agreement was not testamentary in character. *In re Eisenlohr's Estate* (Pa. 1917) 102 Atl. 117.

Courts are often confronted with the problem of determining whether a certain instrument which makes a disposition of a man's property to take effect after his death was intended to operate as a will. It is not enough for any document, in order to be a testament, to provide for the disposition of the property after the decease of the maker; there must be the *animus testandi. McBride* v. *McBride* (1875) 67 Va. 476. The form in which the writing is put, or the name given to it, or the belief of the maker as to its character, although entitled to some weight, is not, however, controlling. See *Ransom* v. *Pottawattamie County* (1915) 168 Iowa 570, 150 N. W. 657; *Daniel and Daniel, Adm'rs* v. *Veal* (1861) 32 Ga. 589. For an instrument to be testamentary as a matter of law, it must (disregarding instruments where only an executor or a guardian is appointed) make provision for the disposition of property to take effect after the testator's death, and it must be ambulatory in its nature. 1 Jarman, Wills (6th ed.) 27. But the fact that the enjoyment or possession of a certain right to property is postponed until after the death of the donor, or that a certain interest is contingent upon such death, does not constitute the instrument granting this interest a testament. See *Novak* v. *Lovin* (1916) 33 N. D. 424, 157 N. W. 297; 17 Columbia Law Rev. 245. If it passes a present interest, or is made irrevocable, it is not a testament; and this is the test which the courts have applied in interpreting particular writings. *Moody* v. *Macomber* (1910) 159 Mich. 657, 124 N. W. 549. It has been uniformly held that a note payable at, or after the maker's death, is a valid note, and not a testament. *Beatty* v. *Western College* (1898) 177 Ill. 280, 52 N. E. 432; *Hegeman* v. *Moon* (1892) 131 N. Y. 462, 30 N. E. 487. The probable basis of such a conclusion is, that upon the execution of the note a present irrevocable interest in the chose in action passes to the payee, although the time for possession is to accrue at some future date. *Cf. Krell* v. *Codman* (1891) 154 Mass. 454, 28 N. E. 578; *Cover* v. *Stem* (1887) 67 Md. 449, 10 Atl. 231. Where, therefore, as in the principal case, the agreement provides for a discharge of the notes, upon the maker's death, it would appear that the effect is identical, *cf. Green* v. *Whaley* (Mo. 1917) 197 S. W. 355, *a fortiori,* where the notes are payable at the end of one year and are to be renewed from year to year. The decision seems, therefore, to be in harmony with the weight of authority.